Premium Vegetable Oils Sdn Bhd v Palm Oil Research and Development Board Malaysia & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-150 OF 1997
MOKHTAR SIDIN, KC VOHRAH JJCA AND FAIZA TAMBY CHIK J
25 JUNE 2002

Revenue Law *— Estate duty — Assessment — Cess imposed under s 14 of the Palm Oil Research and Development Act 1979 — Whether cess was a tax — Whether cess was payable in respect of extraction of crude palm kernel oil or only crude palm oil — Construction of revenue law — Whether taxpayer was liable to be taxed where words in the Act imposing such a tax were not clear — Whether one may refer to a later similar statute to determine the true meaning of the statute*

Statutory Interpretation *— Construction of statutes — Strict interpretation — Cess imposed under s 14 of the Palm Oil Research and Development Act 1979 — Whether cess was payable in respect of extraction of crude palm kernel oil or only crude palm oil — Construction of revenue law — Whether taxpayer was liable to be taxed where words in the Act imposing such a tax were not clear — Whether one may refer to a later similar statute to determine the true meaning of the statute*

The appellant was a palm oil miller. The appellant's factories were engaged in the extraction of crude palm oil ('CPO') from the whole fruits and also in the extraction of crude palm kernel oil ('CPKO') from the kernel of oil palm fruits. In June 1993, the second respondent issued a letter of demand for RM225,310 for the payment of cess on the CPKO production said to be due under the Palm Oil (Research Cess) Order 1979 ('the 1979 Order') for the period inclusive at January 1990 to May 1993. The appellant refused to pay the cess demand. However, the appellant had previously paid the second respondent a sum at RM363,034 purportedly as cess due between July 1985 to June 1989. According to the appellant, under the Palm Oil Research and Development Act ('the 1979 Act'), the minister was empowered to make an Order in respect of the imposition of cess on CPO only and not on CPKO. The appellant contended that under the 1979 Act, 'palm oil' is defined as 'oil, whether in crude or further processed form, extracted from oil palm fruits and seeds'. The appellant claimed for a declaration that the respondents were not empowered to levy and collect the cess on CPKO and for an order for RM363,034. The respondents counterclaimed for RM225,310 being the cess payable. The learned judge dismissed the claim and allowed the counterclaim. Hence this appeal.

Held, allowing the appellant's appeal:

(1) (per **Mokhtar Sidin JCA**) From the evidence, it was clear that although the nut or seed consisted of the shell, kernel and embryo, the kernel by itself could not be said to be a nut or a seed. It was also clear that an oil palm fruit produced two types of oil, one

A from the outer soft pulpy layer called the mesocarp or known as CPO and the other was from the kernel, known as CPKO (see pp 562H–563A).

(2) (per **Mokhtar Sidin JCA**) The principles applicable in the construction of revenue law were that the taxpayer was not to be taxed unless there were clear words in the Act imposing such a tax and that to determine the true meaning of any statute, one may refer to a later similar statute (see p 565A); *Comptroller-General of Inland Revenue, Malaysia v T* [1970] 2 MLJ 35 followed.

(3) (per **Mokhtar Sidin JCA**) Looking at the 1979 Act, it was clear that the imposition of cess was a taxation statute. As such, strict interpretation should be given and where there was any ambiguity, then it should be decided in favour of the taxpayer, viz-a-viz the appellant. Cess could not be imposed on CPKO since it was palm oil extracted from the kernel. The kernel could not be said to be seed (see p 565H–I).

(4) (per **Mokhtar Sidin JCA**) The PORLA Act 1976 ('the 1976 Act'), which was inter-related to the 1979 Act, showed that the authority knew there was a distinction between a seed and a kernel. This was made clear by the subsidiary legislations of the 1976 Act which gave distinct and definite definition of seed and kernel. The 1976 Act and the 1979 Act had since been repealed and replaced by the Malaysian Palm Oil Board Act 1998 ('the 1998 Act'). The 1998 Act, which came into force on 1 May 2000, defined 'palm oil' differently from the 1979 Act because in the 1998 Act, 'palm oil' was defined as 'oil, whether in crude or processed form, originating or extracted from the pericarp of the oil palm fruit, and includes oil, whether in crude or processed form, originating or extracted from the kernel of the oil palm fruit' (see pp 561H–I, 565I–566A).

(5) (per **Mokhtar Sidin JCA**) Applying the principle that to determine the true meaning of any statute one may refer to a later similar statute as stated in *Comptroller-General of Inland Revenue, Malaysia v T*, it was clear that the 1979 Act sought to impose cess on palm oil extracted from the fruits and the seeds (or CPO) and not on palm oil extracted from the kernel (or CPKO). Cess on palm oil extracted from the kernel (or CPKO) was only imposed by the 1998 Act (see p 566C–D); *Comptroller-General of Inland Revenue, Malaysia v T* [1970] 2 MLJ 35 followed.

(6) (per **KC Vohrah JCA**) From the evidence, there was a clear distinction between the oil palm fruit on the one hand and the oil palm seed which contained within itself the oil palm kernel (see p 570G).

(7) (per **KC Vohrah JCA**) The cess imposed under s 14 of the 1979 Act was a tax, although it would not go into the Consolidated

Fund of the Federation of Malaysia when collected but instead would go directly into the fund as directed under s 10 of the 1979 Act (see p 570I). A

(8) (per **KC Vohrah JCA**) The definition of 'oil palm' in s 2 of the 1979 Act was defined as oil extracted from 'oil palm fruits and seeds'. The language gave the impression that the oil to be extracted was from a process which involved both the mesocarp component of the fruit and the seed components of the fruit. The words 'fruits and seeds' were linked by the conjunctive 'and' and it seemed more probable that the legislature intended the definition to mean oil that was extracted from a process which involved the mesocarp and the seed components of the fruit. If the legislature had intended otherwise it could have used the words 'from oil palm fruits and seeds or from oil palm fruits or from oil palm seeds'. There was ambiguity in the 1979 Order in that the words 'and/or' was employed to denote extraction from palm fruits and seeds or from palm fruits or from palm seeds (see p 571C–E). B C D

(9) (per **KC Vohrah JCA**) Words cannot be used loosely in a taxing provision. They must be clear and unambiguous to impose liability on the subject (see p 572F).

[Bahasa Malaysia summary E

Perayu merupakan pengilang minyak kelapa sawit. Kilang-kilang perayu terlibat dalam pemerahan minyak sawit kasar ('MSK') dari keseluruhan bijinya dan juga dalam pemerahan minyak inti sawit kasar ('MISK') dari inti biji minyak sawit. Pada bulan Jun 1993, responden kedua mengeluarkan satu surat tuntutan berjumlah RM225,310 untuk bayaran cukai atas pengeluaran MISK yang dikatakan harus dibayar di bawah Perintah Minyak Kelapa Sawit (Ses Penyelidikan) 1979 ('perintah tahun 1979') untuk tempoh termasuk bulan Januari 1990 hingga Mei 1993. Perayu enggan membayar cukai yang dituntut. Namun demikian, sebelum ini perayu telah membayar responden kedua jumlah sebanyak RM363,034 kononnya sebagai cukai yang harus dibayar antara bulan Julai 1985 hingga Jun 1989. Menurut perayu, di bawah Akta Penyelidikan dan Kemajuan Minyak Kelapa Sawit ('Akta tahun 1979'), Menteri diberikuasa membuat Perintah berhubung dengan pengenaan cukai atas MSK sahaja dan bukannya MISK. Perayu berhujah bahawa di bawah Akta tahun 1979, 'palm oil' ditakrifkan sebagai 'oil, whether in crude or further processed form, extracted from oil palm fruits and seeds'. Perayu menuntut satu perisytiharan bahawa responden-responden tidak diberikuasa mengena dan mengutip cukai atas MISK dan untuk satu perintah untuk jumlah sebanyak RM363,034. Responden-responden menuntut balas jumlah RM225,310 sebagai cukai yang terhutang. Hakim yang arif menolak tuntutan dan membenarkan tuntutan balas. Maka rayuan ini dikemukakan. F G H I

Diputuskan, membenarkan rayuan perayu:

(1) (oleh **Mokhtar Sidin HMR**) Daripada keterangan, adalah jelas bahawa walaupun kekacang atau biji terdiri daripada kulit keras, isi dan embrio, isi dengan sendirinya tidak boleh dikatakan kekacang atau biji. Juga adalah jelas bahawa satu buah minyak sawit menghasilkan dua jenis minyak, satu daripada lapisan luar palpa lembut yang digelar 'mesocarp' atau dikenali sebagai MSK dan yang satu lagi adalah daripada intinya, yang dikenali sebagai MISK (lihat ms 562H–563A).

(2) (oleh **Mokhtar Sidin HMR**) Prinsip-prinsip yang terpakai dalam pentafsiran undang-undang pendapatan adalah bahawa pembayar cukai tidak harus dikenakan cukai melainkan adanya perkataan-perkataan yang jelas dalam Akta tersebut yang mengenakan cukai sedemikian dan bahawa untuk menentukan makna sebenar mana-mana statut, seseorang boleh merujuk kepada statut lebih kemudian yang serupa (lihat ms 565A); *Comptroller-General of Inland Revenue, Malaysia v T* [1970] 2 MLJ 35 diikut.

(3) (oleh **Mokhtar Sidin HMR**) Dengan melihat Akta 1979, adalah nyata bahawa pengenaan cukai merupakan satu statut pencukaian. Oleh yang demikian, tafsiran yang ketat harus diberikan dan di mana timbulnya apa-apa ketaksaan, yang sama harus diputuskan memihak kepada pembayar cukai, viz-a-viz perayu. Cukai tidak boleh dikenakan ke atas MISK kerana ia adalah minyak kelapa sawit yang diperah daripada sawit kasar. Sawit kasar tidak boleh dikatakan sebagai benih (lihat ms 565H–I).

(4) (oleh **Mokhtar Sidin HMR**) Akta Lembaga Pendaftaran dan Perlesenan Minyak Kelapa Sawit 1976 ('Akta tahun 1976'), yang berkait dengan Akta tahun 1979, menunjukkan bahawa pihak berkuasa sedar tentang perbezaan di antara biji dan inti. Ini dijelaskan oleh perundangan subsidiari Akta tahun 1976 yang memberi tafsiran yang khusus dan tentu berkenaan definisi biji dan inti. Sejak itu Akta 1976 dan Akta 1979 telah dimansuh dan diganti oleh Akta Lembaga Minyak Kelapa Sawit 1998 ('Akta tahun 1998'). Akta tahun 1998, yang berkuatkuasa pada 1 Mei 2000, mentakrifkan 'palm oil' berbeza daripada Akta tahun 1979 kerana dalam Akta tahun 1998, 'palm oil' ditakrifkan sebagai 'oil, whether in crude or processed form, originating or extracted from the pericarp of the oil palm fruit, and includes oil, whether in crude or processed form, originating or extracted from the kernel of the oil palm fruit' (lihat ms 561H–I, 565I–566A).

(5) (oleh **Mokhtar Sidin HMR**) Dengan memakai prinsip bahawa untuk menentukan makna sebenar sebarang statut seseorang boleh merujuk kepada statut lebih kemudian yang serupa seperti yang dinyatakan dalam *Comptroller-General of Inland Revenue, Malaysia v T*, adalah jelas bahawa Akta tahun 1979 dihasratkan

mengenakan cukai atas minyak kelapa sawit yang diperah daripada buah dan biji (atau MSK) dan bukannya atas minyak sawit yang diperah daripada intinya (atau MISK). Cukai atas MISK hanya dikenakan oleh Akta tahun 1998 (lihat ms 566C–D); *Comptroller-General of Inland Revenue, Malaysia v T* [1970] 2 MLJ 35 diikut.

(6) (oleh **KC Vohrah HMR**) Dari keterangan, terdapat perbezaan jelas di antara buah kelapa sawit dan biji kelapa sawit yang mengandungi inti minyak kelapa sawit dalamnya (lihat ms 570G).

(7) (oleh **KC Vohrah HMR**) Cukai yang dikenakan di bawah s 14 Akta tahun 1979 adalah satu cukai, walaupun ia tidak akan dimasukkan dalam Kumpulan Wang Disatukan Persekutuan Malaysia apabila dikutip tetapi terus masuk ke dalam tabung tersebut seperti yang diarahkan di bawah s 10 Akta tahun 1979 (lihat ms 570I).

(8) (oleh **KC Vohrah HMR**) Takrifan 'oil palm' dalam s 2 Akta tahun 1979 dibaca sebagai minyak yang diperah dari 'oil palm fruits and seeds'. Susunan bahasa memberi anggapan bahawa minyak yang harus diperah adalah daripada satu proses yang melibatkan kedua-dua unsur kedua-dua bahagian 'mesocarp' buah tersebut dan bahagian biji buah tersebut. Perkataan-perkataan 'fruits and seeds' dikaitkan oleh kata penghubung 'and' dan nampaknya adalah lebih mungkin bahawa badan perundangan berhasrat takrifan tersebut bermaksud minyak yang diperah daripada satu proses yang melibatkan 'mesocarp' dan bahagian biji buah tersebut. Sekiranya perundangan berhasrat yang sebaliknya ia boleh menggunakan perkataan-perkataan 'from oil palm fruits and seeds or from oil palm fruits or from oil palm seeds'. Terdapat ketaksaan dalam Perintah tahun 1979 dalam ertikata perkataan-perkataan 'and/or' digunakan untuk menunjukkan pemerahan daripada buah dan biji kelapa sawit atau daripada buah kelapa sawit atau daripada biji kelapa sawit (lihat ms 571C–E).

(9) (oleh **KC Vohrah HMR**) Perkataan-perkataan tidak boleh digunakan secara bebas dalam peruntukan pencukaian. Mereka mestilah jelas dan tidak taksa untuk mengenakan liabiliti atas perkara tersebut (lihat ms 572F).]

Notes

For cases on assessment of estate duty, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1833–1836.

Cases referred to

Comptroller-General of Inland Revenue, Malaysia v T [1970] 2 MLJ 35 (folld)

A *Greenwood v FL Smidth and Company* [1922] 1 AC 417 (cited)
National Land Finance Co-operative Society Ltd v Director General of Inland Revenue [1994] 1 MLJ 99

Legislation referred to

B Amendment Order 1982
Interpretation Act 1948 s 17A
Malaysian Palm Oil Board Act 1998 (Act 582) ss 2, 35
Palm Oil Research and Development Act 1979 ss 2, 14
Palm Oil (Research Cess) Order 1979
Palm Oil (Cess) Order 1978
C Palm Oil Registration and Licensing Authority (Incorporation) (Amendment) Act 1982
PORLA Act 1976 ss 11, 16

Appeal from: Civil Suit No D1–22–1286 of 1993 (High Court, Kuala Lumpur)

D *Saseedharan Menon* (*Ananth Namasivayam* and *Khabir Dhillon* with him) (*M David Morais*) for the appellant.
Shahul Hameed Amirudin (*Woo Lai Mei* with him) (*Zul Rafique & Partners*) for the respondents.

E **Mokhtar Sidin JCA**: The appellant is a company incorporated in Malaysia. They have two factories, one at Kulai engaged in the extraction of crude palm oil ('CPO') only from the whole fruits and the other at Pasir Gudang, Johor engaged in the extraction of crude palm kernel oil ('CPKO') from the kernel of oil palm fruits. It is not disputed that the appellant are palm oil millers within the definition as provided for under the Palm Oil F Research and Development Act 1979 ('the 1979 Act') and the Palm Oil (Research Cess) Order 1979 ('the 1979 Order'). Clauses 2 and 3 of the Palm Oil (Research Cess) Order 1979 provide as follows:

> 2 In this Order 'palm oil miller' means a person who carries on the business of extracting oil from oil palm fruits and/or seeds.
>
> G 3 Every palm oil miller shall pay a cess of four ringgit for every metric ton or part of a metric ton of crude palm oil produced by him.

It is also not disputed that the 1979 Order was amended in 1982 and 1984. The amendment in 1984 is not relevant for the purpose of this appeal. The 1982 amendment is relevant in view of the definition found in para 2:

> H 2 The Palm Oil (Research Cess) Order 1979 is amended by substituting the following paragraph or para 1;

Citation and commencement	1 This Order may be cited as the Palm Oil Commencement (Research Cess) Order 1979 and shall come into force on the 1st January 1980 in respect of cess on crude palm oil extracted from oil palm fruits and on the 1st July 1980 in respect of cess on crude palm oil extracted from oil palm seeds.

I

As can be seen from this paragraph, cess was imposed on crude palm oil extracted from oil palm fruits and from 1 July 1980, cess was to be imposed on crude palm oil extracted from oil palm seeds. A

Pursuant to the 1979 Order, the respondents imposed cess in respect of the crude oil extracted from the oil palm fruits ('CPO') and from 1 July 1980 imposed cess in respect of crude oil extracted from the kernel of the oil palm fruits ('CPKO)'. The respondents imposed cess on CPKO on the ground that it was crude oil extracted from the seed. The appellant did not dispute the imposition of cess on CPO but disputed the cess imposed on CPKO. In the present appeal, the respondents had imposed the sum of RM363,034 as cess on CPKO to which the appellant had paid. As I have stated earlier, the appellant disputed the imposition of cess in respect of CPKO and took up the present action seeking a declaration that the respondents were not empowered to levy and collect the cess on CPKO and for the refund of the cess imposed and paid by the appellant. The respondents in turn counterclaimed for the sum of RM255,300 where the cess imposed on CPKO had not been paid by the appellant. B C D

The appellant contended that the 1979 Act and the Orders made thereunder did not cover CPKO. The imposition of cess was only on CPO and not on CPKO.

In order to understand the difference between CPO and CPKO, the appellant submitted and not disputed by the respondents, that CPO is the crude oil extracted from the oil palm fruits while CPKO is the crude oil extracted from the kernel of the crushed fruits of the oil palm. The crude oil extracted from the kernel is done chemically whereas the CPO is extracted by crushing the whole fruits. As I have stated earlier, it is also not disputed that the appellant maintained two factories, one in Kulai and the other in Pasir Gudang. The factory at Kulai extracted CPO by crushing the whole oil palm fruits. The kernel of the crushed fruits were then collected and sent to the Pasir Gudang factory where CPKO were extracted chemically. E F

It is the contention of the learned counsel for the appellant that CPKO is not crude oil from the oil palm fruits or seeds as stipulated by s 2 of the 1979 Act which provides the following definition: G

> 'palm oil' means oil, whether in crude or further processed form, extracted from oil palm fruits and seeds.

The respondents, on the other hand, contended that CPKO is crude oil extracted from the seeds of the oil palm, and as such, the respondents have the right to impose cess on CPKO under the 1979 Act and the orders made thereunder. The learned judge in the court below held that CPKO is crude oil extracted from the seeds of the oil palm and the respondents were right in imposing the cess on CPKO extracted by the appellant at their Pasir Gudang factory. Being dissatisfied with the decision, the appellant appealed to this court. H I

Before us, the learned counsel for the appellant submitted that the 1979 Act and the orders made thereunder, empower the imposition of cess only

on CPO and not on CPKO since CPO are extracted from oil palm fruits and/or seeds. On the other hand, CPKO are not extracted from oil palm fruits and/or seeds but from the kernel of the oil palm fruits. He went on to explain (not disputed by the respondents) that the extraction of CPO from the whole fruits and seeds were done physically, ie by forcing the fruits through a press. This process is called crushing. The extraction of CPKO from the kernels is by way of chemical solvents. The kernels are collected from the crushed fruits.

The learned counsel for the appellant submitted that s 14 of the 1979 Act empowers the Minister to make Orders for the imposition of cess on 'palm oil'. The learned counsel further submitted that s 2 of the 1979 Act defines 'palm oil' as oil extracted from the oil palm fruits and seeds which is commonly known as CPO. The learned counsel also submitted that there is no ambiguity in the 1979 Act in that the cess to be imposed is only on the CPO. That being the case under the 1979 Act, the Minister is empowered to make an Order in respect of imposition of cess on CPO only and not others (including CPKO). The Minister through the 1979 Order and subsequent amendment Orders seek to impose cess on CPKO by varying the definition of palm oil slightly in that instead of using the word 'and' the order used the words 'and/or'. The learned counsel for the appellant submitted the words 'palm oil' in the Order should be given the same meaning as the 1979 Act in that the words 'crude oil from oil palm fruits and seeds' should be read conjunctively and not disjunctively as provided for in the 1979 Order. Even if the Order intended the words to be read disjunctively as stated in the 1982 Amendment Order it should be ignored. To do otherwise would render the 1979 Order and the subsequent amendment Orders be ultra vires of the 1979 Act because the Minister is only empowered under the definition of the 1979 Act to impose cess on crude oil from the oil palm fruits and seeds which is CPO.

To strengthen his arguments, the learned counsel for the appellant then referred to the PORLA Act 1976 ('the 1976 Act'). It is to be noted the 'Minister' referred to in the 1976 Act and the 1979 Act is the same person. Learned counsel for the appellant submitted that the 1976 Act made clear distinctions between oil palm fruits, oil palm seeds and palm kernels as found in ss 11 and 16 of the 1976 Act which provide:

> 11 Functions of the Authority
>
> The functions of the Authority are —
>
> (a) to regulate, co-ordinate and promote all activities relating to the supply, sale, purchase, distribution, movement, storage, export and import of oil palm fresh fruit, palm oil and palm kernel, and the milling of oil palm fruit;
>
> ...
>
> 16 Cess on Oil Palm Product
>
> (1) The Authority with the approval of the Minister given; after consultation with the Minister of Finance, make orders for the imposition, variation or cancellation of a cess on palm oil and palm

kernel and the orders may specify the nature, amount and rate of cess and the manner of collection of the cess.

(2) Orders made under this section may prescribe different amounts and rates of cess for different categories, standards or grades of palm oil and palm kernel.

(3) The Authority may, with the approval of the Minister given after consultation with the Minister of Finance, make orders for the imposition, variation or cancellation of a research cess on palm oil and palm kernel; and the orders may specify the nature, amount and rate of research cess and the manner of collection of the cess.

This distinction was further clarified when the 1976 Act was amended in 1982 by the Palm Oil Registration and Licensing Authority (Incorporation) (Amendment) Act 1982 where it is provided as follows:

2 Amendment of s 2

Section 2 of the Palm Oil Registration and Licensing Authority (Incorporation) Act 1976, which in this Act is referred to as 'the principal Act', is amended by —

...

(c) inserting immediately after the definition of 'oil palm fruit' appearing therein the following new definition:

'oil palm product' means any product obtained directly from the oil palm and does include palm oil, palm kernel, palm kernel cake, palm fatty acids, oil palm seeds and oil palm seedlings;

(d) substituting for the definition of 'palm oil' appearing therein the following:

'palm oil' means oil, whether in crude or processed form, extracted from oil palm fruits or oil palm seeds;

...

4 Amendment of s 11

Section 11 of the principal Act is amended by —

(a) substituting for the words 'oil palm fresh fruit, palm oil and palm kernel and the milling of oil palm fresh fruit,' appearing in para (a) thereof the following words:

'oil palm product, and the milling of oil palm fruit;' and

(b) substituting for the words 'oil palm fresh fruit, palm oil and palm kernel' appearing in paragraph (b) thereof the words 'oil palm product'.

...

7 Amendment of s 16

Section 16 of the principal Act is amended by substituting for the words 'palm oil and palm kernel' appearing in subsections (1) and (2) thereof the words 'oil palm product'.

The first Order under the 1976 Act was the Palm Oil (Cess) Order 1978 which provides as follows:

A 2 Imposition of cess

Every palm oil miller shall pay a cess of one dollar on every metric ton or part of a metric ton of crude palm oil produced by him.

This order was subsequently amended in 1988 by the Palm Oil (Cess) (Amendment) Order 1988. The relevant amending provisions are as B follows:

2 Amendment of paragraph 2

The Palm Oil (Cess) Order 1978, which in this Order is referred to as 'the principal Order', is amended by substituting for paragraph 2 the following new para 2:

C 2 Imposition of Cess

Any person who produces crude palm oil or crude palm kernel oil shall pay a cess of two ringgit and seventy five sen on every metric ton or part of a metric ton of crude palm oil or crude palm kernel oil produced by him.

D 3 Paragraph 3 of the principal Order is amended —

(a) by substituting for the words 'Every palm oil miller' the words 'Any person who produces crude palm oil or crude palm kernel oil'; and

(b) by inserting after the words 'crude palm oil' the words 'or crude palm kernel oil'.

E 4 Paragraph 4 of the principal Order is amended —

(a) by substituting for the words 'Every palm oil miller' the words 'Every person produces crude palm oil or crude palm kernel oil'; and

(b) by inserting after the words 'crude palm oil' the words 'or crude palm kernel oil'.

F It was pointed out to us that the 1976 Act and the 1979 Act were repealed by the Malaysian Palm Oil Board Act 1998 (Act 582) ('the 1998 Act'). The learned counsel for the appellant then invited us to refer to ss 2 and 35 of the 1998 Act which read:

G 2 Interpretation

In this Act, unless 'the context otherwise requires —

...

'oil palm product' means any product obtained directly from the oil palm or wholly or partly manufactured or derived from such product and includes palm oil, palm kernel, palm kernel cake, oil palm shell, palm H fatty acids, oil palm planting material, oil palm fruit, oil palm fibre, oil palm empty fruit bunches, oil palm fronds, oil palm trunks, oil palm roots, oil palm based fibreboards, oil palm based pulp and paper and oil palm based chemicals;

'palm oil' means oil, whether in crude or processed form, originating or extracted from the pericarp of the oil palm fruit, and includes oil, I whether in crude or processed form, originating or extracted from the kernel of the oil palm fruit;

...

35 Cess on oil palm product

(1)The Minister may, after consultation with the Minister of Finance, make orders for the imposition, variation or cancellation of a cess on oil palm products produced in or exported from Malaysia and the orders may specify the nature, amount and rate of the cess and the manner of collection of the cess.

The learned counsel for the appellant referred to the provisions in the various legislation and subsidiary legislation in order to show us that there is a clear distinction between CPO and CPKO. The 1979 Act seeks to impose cess only on CPO and not on CPKO.

To illustrate the distinction between CPO and CPKO, the learned counsel referred to the evidence of PW2 as found in the record. In his evidence, PW2 stated that the appellant carried out two operations. The first is the production of CPO from the oil palm fruits during which the palm kernel was produced. The second operation was the extraction of CPKO from the palm kernel and then processing the CPKO into speciality fats for making chocolates and non-dairy products. PW2 went on to state that the shell and the kernel is called the nut. Though the nut and the seed used interchangeably but in the palm oil industry a seed is used in the propagation of the plant which is used as a material for reproduction. A nut consists of the shell and the kernel. The kernel is one part of the nut (the encased part). The shell is the harder part to encase the softer white substance ('the kernel'). The kernel by itself cannot be a seed because one could not grow a plant out of it without the shell. Admittedly, it is a product of the fruit of an oil palm tree. CPKO is extracted from the kernel. In order to produce the kernel, one has to crush the shell and separate the kernel from the shell.

The respondents, on the other hand, through their sole witness ('DW1') gave evidence that the seed of an oil palm comprises of the shell, the kernel and the embryo. The embryo is the one that grows into a new plant. The kernel is the pod reserve to support the growth of a young plant and the shell is the hard protective layer which plays no part in the germination process. As such, the seed constitutes the shell, the kernel and the embryo and as such the seed and the nut are the same.

The idea of this microscopic distinction by the appellant is to show that CPKO is not extracted from the seed and is not subjected to cess. It is clear in my mind that the respondents imposed the cess on the basis that CPKO is a product from the seed which is covered by the 1979 Act and the Orders made thereunder. The appellant, on the other hand, contended that the cess could not be imposed on CPKO because the crude oil extracted is from the kernel only and not from the nut or seed.

From the evidence it is clear to me that though the nut or seed consists of the shell, kernel and embryo, the kernel by itself cannot be said to be a nut or a seed. The witness for the respondents cited the coconut oil as an example where he said that the coconut oil could only be extracted from the kernel. With the greatest respect to that witness, it is clear from the evidence

that an oil palm fruit produces two types of oil, one is from the outer soft pulpy layer which is called the mesocarp which is known as CPO and the other is from the kernel which is known as CPKO. There is no dispute in respect of this. It is clear to me that the appellant conceded that the CPO attracted cess under the 1979 Act and the Orders made thereunder. On the other hand, the appellant contended that cess could not be imposed on CPKO because it is not extracted from an oil palm fruit or seed since it is extracted from the kernel alone which by itself could not be termed as a fruit or seed. The learned counsel further submitted that palm oil which attracts cess is defined in the 1979 Act as follows:

> 'palm oil' means oil, whether in crude or further processed form, extracted from oil palm fruits and seeds.

The learned counsel for the appellant submitted that cess is a tax. As such, any law which imposes cess should be stated in clear and plain terms. No ambiguity should exist. The learned counsel for the appellant then cited a statement by Lord Buckmaster in *Greenwood v FL Smidth and Company* [1922] 1 AC 417 at p 423:

> ... It is, I think, important to remember the rule, which the courts ought to obey, that, where it is desired to impose a new burden by way of taxation, it is essential that this intention should be stated in plain terms. The courts cannot assent to the view that if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the taxpayer.

The learned counsel also cited the Federal Court decision in *Comptroller-General of Inland Revenue, Malaysia v T* [1970] 2 MLJ 35. In that case, the respondent was employed as chief staff surveyor with the Malaya-Borneo Building Society. He was told by a letter dated 3 February 1960 that if at any future time it be necessary to declare expatriate staff redundant, staff surveyors would be granted compensation for loss of office on terms not less generous than those that apply to redundancy. On 25 November 1965, the respondent was informed that he would be declared redundant and paid redundancy pay of $28,050. The Comptroller-General declared this sum was subject to tax on the ground that it was income received by the respondent 'as gains or profits from employment'. That view was upheld by the Special Commissioners but the High Court reversed that decision. On appeal to the Federal Court, Gill FJ (as he then was) at pp 40–41 said:

> The words of section 10 in themselves do not unambiguously impose a tax for payments made as compensation for loss of office. In the absence of a clear intention that tax should be imposed, the respondent is not liable to payment for the sum granted for the abrogation of his contract. It is an important canon in the construction of revenue Acts that the subject is not to be taxed unless there are clear words in the Act imposing such a tax. In this connection, Lord Blackburn said in the House of Lords in *Coltness Iron Company v Black* (1880–81) 6 App Cas 315, 330:
>
> > 'No tax can be imposed on the subject without words in an Act of Parliament clearly shewing an intention to lay a burden on him. ... and I

> think the only safe rule is to look at the words of the enactment and see what is the intention expressed by those words.' A

Lord Simonds in *Russell v Scott* [1948] 2 All ER 1, 5, reasserted the same rule of construction when he addressed the House of Lords in the following words:

> 'My Lords, there is a maxim of income tax law which, though it may sometimes be over-stressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the taxing statute unambiguously impose the tax on him. It is necessary that this maxim should on occasion be reasserted and this is such an occasion.' B

...

This new Act satisfies the rule to which reference was made by Lord Buckmaster in *Greenwood v FL Smidth & Co* [1922] 1 AC 423, in the following words: C

> 'It is, I think, important to remember the rule, which the courts ought to obey, that, where it is desired to impose a new burden by way of taxation, it is essential that this intention should be stated in plain terms. The courts cannot assent to the view that if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the taxpayer.' D

The later Act of 1967 imposes a new liability, extends the burden and clearly alters the intention of the earlier Ordinance of 1947. In view of this, it is proper to interpret the earlier Ordinance by reference to the later Act if, in the words of Lord Buckmaster in *Ormond Investment Company Ltd v Betts* [1928] AC 143, 156, the provision in the earlier Act is 'fairly and equally open to diverse meanings'. E

In *Kirkness v John Hudson & Co Ltd* [1955] 2 All ER 345, it was held that a later statute may not be referred to for the purpose of interpreting clear terms of an earlier Act which the later statute does not amend, even though both Acts are by the express provision of the later statute to be construed as one, unless the later statute expressly places a particular interpretation on the terms of the earlier Act; but if the earlier enactment was ambiguous, a later statute may throw light on the true interpretation of that enactment, as where a particular construction of the earlier enactment will render the later incorporated statute effectual. *Maxwell on Interpretation of Statutes* (11 Ed), at p 22 says: F G

> 'There is some presumption that statutes passed to amend the law are directed against defects which have come into notice about the time when those statutes passed.'

In my judgment, there can be little doubt that there was a defect in the Ordinance of 1947 which has been cured by the new Act by including in the definition of 'gains or profits from an employment' the words 'compensation for loss of employment' which are not to be found in the earlier Ordinance. Clearly, therefore, the compensation paid to the respondent on the abrogation of his contract of service is not liable to tax under the Ordinance of 1947. Indeed, it was acknowledged by counsel for the appellant in the court below that if the sum paid to the respondent is held to be compensation for loss of office, then it is not liable to income tax under that Ordinance. H I

That case laid out two principles. Firstly, in the construction of any revenue law, the subject is not to be taxed unless there are clear words in the Act imposing such a tax. Secondly, to determine the true meaning of any statute one may refer to a later similar statute. In my view, both principles are applicable to the present appeal.

The Supreme Court applied the first principle in *National Land Finance Co-operative Society Ltd v Director General of Inland Revenue* [1994] 1 MLJ 99 where it was held that where there was a doubt, the ambiguity must be construed in favour of the appellant as the exemption from tax had not been removed by sufficiently clear words to achieve that purpose. At p 106, Gunn Chit Tuan CJ (Malaya) (as he then was) said:

> There are ample authorities to show that courts have refused to adopt a construction of a taxing Act which would impose liability when doubt exists. In *Re Micklewait* ((1855) 11 LJ Ex 452), it was held that a subject was not to be taxed without clear words. We realize that revenue from taxation is essential to enable the Government to administer the country and that the courts should help in the collection of taxes whilst remaining fair to taxpayers. Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J in *Cape Brandy Syndicate v Inland Revenue Commissioners* (12 TC 358):
>
> > '... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used ...'
>
> 'It has also been said by the judicial committee in *Oriental Bank Corp v Wright* ((1880) 5 AC 842) that 'the intention to impose a charge upon a subject must be shown by clear and unambiguous language'.

The learned counsel for the appellant went at great length to show us that the cess stated in the 1979 Act and the Orders made thereunder is tax by referring to the dictionary, *Lexicon and Words and Phrases*. There is no necessity for the appellant to do so because in my mind, the cess imposed is a tax within the meaning of taxing issues. Further, there is no denial by the respondents. Despite that, the learned counsel for the respondents urged this court to give a liberal interpretation and see the purposes that the Act was legislated as provided by s 17A of the Interpretation Acts 1948 and 1967.

With the greatest respect to the learned counsel for the respondents, I am bound by the established principles in that in taxing statute, one has only to look what is clearly said in the statute. There is no room to look into the purpose, the object or the intent that the Act was legislated.

Looking at the 1979 Act, it is clear to me that the imposition of cess was a taxation statute. As such, the strict interpretation should be given. Where there is any ambiguity then it should be decided in favour of the taxpayer, viz-a-viz the appellant in the present appeal. In my view, cess could not be imposed on CPKO since it is palm oil extracted from the kernel. The kernel, in my view, cannot be said to be seed. The 1976 Act which was inter-related to the 1979 Act, shows that the authority knew

there is a distinction between a seed and the kernel. This was made clear by the subsidiary legislations of the 1976 Act which gave distinct and definite definition of seed and kernel. A

As pointed out to us, both the 1976 Act and the 1979 Act were repealed and replaced by the 1998 Act. This new Act which came into force on 1 May 2000 makes it clear in s 2 that palm oil includes oil extracted from the kernel of the oil palm fruit. The definition of palm oil in s 2 provides: B

> 'palm oil' means oil, whether in crude or processed form, originating or extracted from the pericarp of the oil palm fruit, and includes oil, whether in crude or processed form, originating or extracted from the kernel of the oil palm fruit; ... C

As such, there is clear distinction between the kernel and the seed.

Applying the principle that to determine the true meaning of any statute one may refer to a later similar statute as stated by Gill FJ in *Comptroller-General of Inland Revenue, Malaysia v T*, it is clear to me that the 1979 Act was to impose cess on palm oil extracted from the fruits and the seeds and not on palm oil extracted from the kernel. Cess on palm oil extracted from the kernel is only imposed by the 1998 Act. D

For the reasons abovestated, I agree with the submission of the learned counsel for the appellant that there is a distinction between palm oil extracted from the seed and palm oil extracted from the kernel. As such, the 1979 Act seeks to impose cess only on palm oil extracted from the fruit and the seed and not on palm oil extracted from the kernel. In other words, the 1979 Act imposed cess only on CPO and not on CPKO. E

For the above reasons, I will allow the appeal with costs here and below. The respondents could not impose cess on CPKO and whatever cess imposed and paid by the appellant should be refunded. The deposit is to be refunded to the appellant. F

Both parties conceded that our decision in this appeal would be binding in the appeal listed as MRRS No W–02–671–2000.

My learned brother, Faiza Tamby Chik J, has the opportunity of reading my judgment in draft and the draft judgment of KC Vohrah JCA and expressed his view that he agrees with both judgments and the conclusion therein. G

KC Vohrah JCA: There are two appeals involving the same subject matter and counsel who appeared for the same parties in both cases have opted to have this appeal heard and the decision of it binding on the other appeal, Civil Appeal No W–02–671–2000. H

The Palm Oil Research and Development Act 1979 ('the 1979 Act') established the Malaysia Palm Oil Research and Development Board ('the Board') and provided, inter alia, for the establishment and administration of a fund (see s 10 of the 1979 Act) for the purpose of financing research. Into this fund were paid monies collected from various sources including cess collected under s 14 of 1979 Act. I

Under s 14 of the 1979 Act, the minister (for the time being charged with the responsibility of the oil palm industry) 'may, after consultation with the Board and with the Minister of Finance, make orders for the imposition, variation or cancellation of a research cess on *palm oil*; and the orders may specify the nature, the amount and rate and the manner of collection of the cess.

I have emphasized the word 'palm oil' mentioned in s 14 of the 1979 Act because it contains the seed of dispute in this case.

On 14 December 1979, the minister made an Order under the said s 14 of the 1979 Act cited as the Palm Oil (Research Cess) Order 1979 ('the 1979 Order'). Under para (2) of the 1979 Order, a 'palm oil miller' means 'a person who carries on the business of extracting *oil from oil palm fruits and/or seeds*'.

Cess was imposed under para 3 and the paragraph reads:

> Every palm oil miller shall pay cess of four ringgit for every metric ton of *crude palm oil* produced by him. (Emphasis added.)

Considering that there has been some confusion in the High Court judgment on the 1979 Order and the subsequent orders, it is best that the 1979 Order is reproduced substantially:

> PALM OIL RESEARCH
> AND DEVELOPMENT ACT 1979
>
> Palm Oil (Research Cess) O 1979
>
> In exercise of the powers conferred by s 14(1) of the Palm Oil Research and Development Act 1979, the Minister, after consultation with the Palm Oil Research and Development Board and with the Minister of Finance, makes the following Order:
>
> 1 This Order may be cited as the Palm Oil (Research Cess) Order 1979, and shall come into force on 1 January 1980;
>
> 2 In this Order, 'palm oil miller' means a person who carries on the business of extracting oil from *oil palm fruits and/or seeds;*
>
> 3 Every palm oil miller shall pay a cess of four ringgit for every metric ton or part of a metric ton of *crude palm oil* produced by him;.
>
> 4 Every palm oil miller shall pay cess to the Palm Oil Research and Development Board not later than the 35th day of each quarter of a calendar year for *crude palm oil* produced by him during the preceding quarter;
>
> 5 Every palm oil miller shall submit to the Board not later than the seventh day of each month a true return in the appropriate form as prescribed by the Board showing the amount of *crude palm oil* produced by him during the preceding month;
>
> 6 Any person who contravenes any provision of this Order shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months, or to both.
>
> Made the 14 December 1979
> [KPU(E) O 8/1/96/13; PN (PU2) 354]

Dato' Leong Khee Seong
Minister of Primary Industries

(Emphasis added.)

The rates of cess were varied from time to time and peculiarly, instead of having separate Orders made for the variations, the 1979 Order was amended from time to time. On 20 March 1982, the 1979 Order was amended by the Palm Oil (Research Cess) (Amendment) Order 1982 ('the 1982 Amending Order') which had retrospective effect as from 1 January 1980 and it is reproduced below:

PU(A) 195

Palm Oil Research and Development Act 1979

Palm Oil (Research Cess) (Amendment) Order 1982

In exercise of the powers conferred by s 14(1) of the Palm Oil Research and Development Act 1979, the Minister, after consultation with the Board and with the Minister of Finance, makes the following order:

1 This Order may be cited as the Palm Oil (Research Cess) (Amendment) Order 1982 and shall be deemed to have come into force on 1 January 1980;

2 The Palm Oil (Research Cess) Order 1979 is amended by substituting the following paragraph for paragraph 1;

1 This Order may be cited as the Palm Oil (Research Cess) Order 1979 and shall come into force on 1 January 1980 in respect of cess on *crude palm oil extracted from oil palm fruits* and on 1 July 1980 in respect of cess on *crude palm oil extracted from oil palm seeds.*

Made 29 March 1982
[KPU(E) O 8/1/96/13; PN (PU2) 354]

Dato' Leong Khee Seong
Minister of Primary Industries

(To be laid before the Dewan Rakyat pursuant to s 14(3) of the Palm Oil Research and Development Act 1979)
(Emphasis added.)

To be noted in this amending Order is that the reference is not only to 'crude palm oil extracted from *oil palm fruits*' but to 'crude palm oil extracted from *oil palm seeds*'. In other words, a distinction was made in regard to cess imposed on 'crude palm oil extracted from oil palm fruits' from 1 January 1980 and cess imposed on 'crude palm oil extracted from oil palm seeds' as from 1 July 1980.

Confusingly there was another amending Order PU(A) 485 of 1984 ('the 1984 Amending Order') to this amending order made on 20 December 1984 but which again had retrospective effect as from 1 January 1980 and its purpose was the imposition of cess through amendment of paragraph 3 of the original 1979 Order:

Every palm oil miller shall pay a cess of five ringgit for every metric ton or part of a metric ton of crude palm oil produced by him.

A What is to be noted is that there is no mention of oil palm *kernel* either in the Act or in any of the Orders made under s 14.

It is not disputed that Premium Vegetable Oils Sdn Bhd, the plaintiff in the case below, is a company in Johor engaged, inter alia, in the production of Crude Palm Kernel Oil ('CPKO') which is a liquid substance extracted B from oil palm kernels by the use of a chemical and solvent process, and that these operations are conducted at its factory situated in Pasir Gudang. It also has another factory in Kulai producing crude palm oil ('CPO') extracted from oil palm fruits and seeds.

On 26 June 1993, the Director General of Palm Oil Research Institute C of Malaysia (a body established under s 7 of the 1979 Act) ('the second defendant') in the case below, issued a letter of demand for RM225,310 for the payment of cess on the CPKO production said to be due under the 1979 Order as amended by the 1982 and 1984 Amending Orders for the period inclusive of January 1990 to May 1993.

The plaintiff refused to pay the cess demand. However, the plaintiff had D previously paid the second defendant a total sum of RM363,034 purportedly as cess due between July 1985 to June 1989.

The plaintiff claimed for a declaration that the defendants were not empowered to levy and collect the cess on CPKO and for an order for the refund of the sum of RM363,034. The basis of the claim before the judge E was that the minister had no power to impose cess on CPKO. The defendants counterclaimed for RM255,300 being the cess payable. The learned judge ruled, however, that the minister had acted intra vires s 34 in making the 1979 Order and the 1982 and 1984 Amending Orders and dismissed the claim and allowed the counterclaim. Thus this appeal.

F I need to consider the definition of 'palm oil' in s 2 and what the expressions 'oil palm fruits' and 'oil palm seeds' mean contextually in the definition of 'palm oil' in s 2 and also what the expression 'oil palm kernel' which does not appear in the definition under s 2 means. Section 2 of the 1979 Act defines 'palm oil' thus:

G > 'palm oil' means oil, whether in crude or further processed form, extracted from oil palm fruits and seeds.

We have already adverted to s 14 of the 1979 Act where the minister 'may make Orders for the imposition ... of a research cess on palm oil' and the 'Orders may specify the nature ... of the cess'.

H According to the plaintiff, with the expression 'oil palm fruits and seeds' the minister is empowered to make Orders under s 14 of the 1979 Act for the imposition of cess for CPO and not for CPKO as CPO is made from oil palm fruits and seeds while CPKO is made only from oil palm seeds.

I I need to understand what 'seed' and 'kernel' mean. Evidence was adduced by the plaintiff in the High Court to show that at the Kulai Factory, the plaintiff first separates oil from the pulp (the mesocarp) and some seeds of the oil palm fruit by way of physical extraction, ie by forcing

the fruit through a press. From this process called 'crushing', CPO is produced.

Not all seeds are crushed. The remaining seeds are then put through another process by which the fibre is separated from the seed and the shell of the seed is separated from what is inside it; the kernel is what is within the shell.

The palm kernels from the Kulai Factory and from other mills are then transported to the Pasir Gudang Factory. At this factory, the whole kernel is put to a process of chemical solvent extraction and oil is produced and it is called CPKO.

As to what is a seed, we have the evidence of a witness of the defendants, an agricultural consultant, who is a botanist and has a PhD in Genetics in Oil Palm. He described the oil palm fruits and their make up:

> (The fruit) has an outer pulpy layer — usually called mesocarp. Under the mesocarp, there is a hard layer which is called the shell. Inside the shell is a white layer called the kernel and within the kernel there is embedded an embryo. The whole structure is known as the fruit which has one seed — and the seed comprises of the shell, the kernel and the embryo. The embryo is the one that grows into a new plant. The kernel is the food reserve to support the growth of the young plant. The shell is the hard protective layer which plays no part in the germination process. The seed as it is constituted is made up of the shell, the kernel and the embryo and has the capacity to produce a new plant ...

The witness, in answer to a question whether in the specialized palm oil industry, the term 'seed' has a specialized meaning, ie whether it is not only capable of germination but also of producing a strain of oil palm according to the buyer's needs had this to say:

> Only in the context of planting material — the seed remains the seed, but not all seeds are going to be used in the propagation. The seeds that are going to be used in the propagation will not be used to extract oil. The seeds from which oil is extracted cannot be used for propagation.

There obviously is a clear distinction between the oil palm fruit on the one hand and the oil palm seed which contains within itself the oil palm kernel.

So we go back to the definition of 'palm oil' in the 1979 Act and to the 1979 Order and the other two amending Orders.

It is the argument of the plaintiff that the language of the 1979 Act, read together with the said 1979, 1982 and 1984 Amending Orders is ambiguous as to what may be subject to cess and that as a matter of interpretation relating to a taxing provision, the provision must not be of doubtful and ambiguous meaning — the provision must expressly provide for the imposition and collection of such tax.

The cess which can be imposed under s 14 is a tax — it is not a tax which when collected goes into the Consolidated Fund of the Federation of Malaysia but goes directly into the fund as directed under s 10.

In *Greenwood v FL Smidth & Co* [1922] 1 AC 417, Lord Buckmaster stated at p 423 that the courts cannot assent to the view that if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the tax payer. Similarly, in *Comptroller-General of Inland Revenue Malaysia v T* at p 40, Justice Gill FJ had this to say at p 40:

> In the absence of a clear intention that tax should be imposed, the respondent is not liable to payment for the sum granted for the abrogation of his contract. It is an important canon in the construction of revenue Acts that the subject is not to be taxed unless there are clear words in the Act imposing such a tax.

I had noted that in the definition of 'oil palm' in s 2, it is the oil extracted from 'oil palm fruits and seeds' and we know — it is common knowledge and there is the evidence of the agricultural consultant — that the fruit contains the seed and yet it is worded that way. The language does give the impression that the oil to be extracted is from a process which involves both the mesocarp component of the fruit and the seed components of the fruit. The words 'fruits and seeds' are linked by the conjunctive 'and' and it seems more probable that the legislature intended the definition to mean oil that is extracted from a process which involves the mesocarp and the seed components of the fruit. If the legislature had intended otherwise it could have used the words 'from oil palm fruits and seeds or from oil palm fruits or from oil palm seeds' bearing in mind 'fruits' mean the mesocarp component of the fruits. Admittedly there is ambiguity and the 1979 Order, which recognized the ambiguity, employed the words 'and/or', as was pointed earlier, to denote extraction from palm fruits and seeds or from palm fruits or from palm seeds. Paragraph 2 of this Order reads:

> In this Order, 'palm oil miller' means a person who carries on the business of extracting oil from oil palm *fruits and/or seeds*. (Emphasis added.)

This was a clear recognition also that a miller could produce oil from oil palm fruits in one process and also produce oil from palm oil seeds in a different process. But while this was recognized, cess was payable only on 'crude palm oil' (see para 3 of the 1979 Order) and obviously this expression had to relate back to the definition in s 2, meaning that it is oil extracted from the 'oil palm fruits and seeds'.

The learned trial judge did not recognize the inherent ambiguity of the language used in s 2 relating to 'crude palm oil' in the definition of 'palm oil' and the various Orders and he tried to read more into para 3 of the 1979 Order which states 'every palm oil miller had to pay a cess for every metric ton or part of a metric ton of crude palm oil produced by him'.

The learned trial judge stated in regard to this provision:

> Importance and great emphasis is being placed by me on the usage of the prefix 'of' to crude palm oil (as used for every metric ton of crude palm oil). According to the *Concise Oxford Dictionary* (9th Ed), 'of' has been defined

> expressing a wide range of relations broadly describable; ie a broad aspect of the class of palm oil including crude kernel palm oil (CPKO) and not restrictive to a unit.

With respect to the learned judge, I do not think I can agree with him on the interpretation of the preposition 'of' to the extent that he says it should be and we have to remember the 1979 Order is a subsidiary legislation and cannot enlarge what is circumscribed by the enabling provision of the mother Act.

It is also for the same reason that I cannot agree with the learned judge who, though obviously finding ambiguity in the language used in the 1979 Act, tried to harmonize the language of the 1979 Act with the language of the Orders made thereunder. He said:

> Further at the time when the Act was passed, Parliament had clearly intended and well recognized that cess payable on all palm oil ie oil, whether in crude or other further processed form, extracted from oil palm fruits and seeds; and the words:
>
> (i) *'fruits and seeds'* in the Act of 1979;
>
> (ii) 'fruits and/or seeds' in the Palm Oil (Research Cess) Order 1979;
>
> (iii) crude palm oil extracted from oil palm fruits crude palm oil extracted from oil palm seeds in the Order of 1982;
>
> are loosely used to be read in harmony, to convey the only one meaning, that Parliament had in fact intended that all palm oil millers were required to pay cess on *any kind of crude oil*, be it produced from the fruits and/or the seed; and the courts in the construction of the words are not to be restricted by the words the legislature had chosen to use, and this court had taken that absolute liberty to determine that intended intention ... (Emphasis added.)

Words cannot be used loosely in a taxing provision. They must be clear and unambiguous to impose liability on the subject. I find that to the extent the amending Orders have imposed cess on palm oil extracted from only oil palm seeds, they are ultra vires the 1979 Act.

I would therefore allow the appeal and set aside the orders made by him.

I would make the following orders:

(1) a declaration that the defendants are not empowered under the 1979 Act nor the Palm Oil (Research Cess) Order 1979 as amended by the Palm Oil (Research Cess) (Amendment) Order 1982 and the Palm Oil (Research Cess) (Amendment) Order 1984 to levy cess on the plaintiff for production and extraction of CPKO and that the counterclaim of the defendants has no basis;

(2) the sum of RM363,034 paid to the second defendant is to be refunded by the second defendant to the plaintiff; and

(3) interest thereon at 8%pa from July 1985 to the date of realization.

A Costs of the appeal and in the court below to the plaintiff. Deposit to be refunded.

Appellant's appeal allowed.

Reported by Lim Lee Na

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